

DIRECT MARKETING AND VISITOR SERVICES AGREEMENT

This AGREEMENT is made and entered into effective this 15th day of October, 1997 between the **LEON COUNTY TOURIST DEVELOPMENT COUNCIL** with its principal office located at 200 West College Ave., Tallahassee, Florida 32301 (hereinafter called the "TDC"); and the **TALLAHASSEE AREA CONVENTION AND VISITORS BUREAU, INC.** with its principal office located at 200 West College Avenue, Tallahassee, Florida 32301 (hereinafter called the "TACVB").

WITNESSETH

WHEREAS, pursuant to the Local Option Tourist Development Act, Leon County has by Ordinance No. 88-01 established the Leon County Tourist Development Council, has levied and imposed a three percent (3%) tourist development tax, and has established a tourist development plan for the use of funds derived from such tax; and

WHEREAS, the TDC wishes to employ the TACVB to conduct direct marketing programs to promote Leon County as an ideal sports, business, convention and vacation travel destination to sports organizing bodies, meeting planners, travel intermediaries and consumers; and

WHEREAS, the TDC wishes to employ the TACVB to develop and implement a professional, comprehensive and reasonably priced visitor services program to encourage new and repeat utilization and visitation.

NOW, THEREFORE, in consideration of the above and the mutual covenants contained herein, the parties agree as follows:

1. APPOINTMENT AND AUTHORIZATION OF THE CONTRACTOR. The TACVB is hereby retained and appointed to represent the TDC in carrying out its direct marketing and visitor services programs. The TACVB is authorized to enter into contracts with third parties to carry out the purposes of this Agreement, and it shall be liable to such parties for all payments. The TACVB shall use its best efforts to prevent any loss to the TDC from the failure of proper performance by any third party, and third parties shall always be advised by the TACVB that payment for goods and services will be only in conformance with the financial operating procedures of Leon County and the Florida Statutes.

2. TACVB PROGRAMS AND SERVICES. The TACVB shall act as the TDC'S direct marketing and visitor services representative and perform, upon prior authorization by the TDC, all standard services and responsibilities associated with these functions to the extent necessary to meet the TDC'S needs.

The TACVB's annual marketing plans, desired program and service levels, and respective budgets, for each year during the term of this Agreement, shall be developed in conjunction with and approved by the TDC. Each approved marketing plan will then become a part of this agreement and used as a framework to evaluate performance.

3. COLLATERAL MATERIAL. Collateral material will provide necessary support to the direct marketing and visitor services programs. Assistance and costs associated with the design and production of collateral material will be a shared responsibility between the TDC and the TACVB.

4. ACCOUNT COORDINATION. In the performance of these services, the Executive Director of the TACVB shall be the principle contact responsible for performance.

5. PRIOR APPROVAL OF THE TDC. The TACVB shall develop and implement direct marketing and visitor services programs for the TDC only after first submitting a fiscal year marketing plan and budget including overall program and individual project goals, objectives, and strategic action plans to the Executive Director for TDC approval. The TACVB shall not incur any program related obligations, provide any services for the TDC'S account, or make financial expenditures, direct or indirect, for the TDC's account without first obtaining approval of the annual marketing plan and budget from the Executive Director or duly designated member of the TDC. This marketing plan shall consist of a program of work with estimate of costs in a format acceptable to the TDC, containing full descriptions of the proposed projects and estimates of the costs of the obligations or services involved.

6. MARKET PLANNING.

a) Current Fiscal Year. This agreement becomes effective beyond the start of the TDC's current fiscal year which begins October 1, 1997. The TDC understands that preliminary market planning has occurred including development of a program of work.

b) Subsequent Fiscal Years. The TACVB shall submit to the Executive Director for TDC approval a preliminary direct marketing and visitor services plan and budget for each subsequent fiscal year on or before July 1 in the year prior. This

preliminary plan shall be consistent with the goals of the TDC's tourist development plan and outline all direct marketing and visitor services needs. A final marketing plan and budget will be submitted on or before July 31 in the year prior. Marketing plan updates shall be presented for TDC approval at the regularly scheduled TDC meetings during the respective fiscal year.

c) Effectiveness. The TACVB shall establish measures which will evaluate the effectiveness of the direct marketing and visitor services programs and incorporate these measures into each fiscal year's marketing plan.

7. PROGRESS REPORTS. The TACVB agrees to provide periodic progress reports in a format acceptable to the TDC at regularly scheduled meetings and a final report at the end of each fiscal year. These progress reports shall compare actual accomplishments and results with goals and objectives established at the beginning of the year. The TDC will be entitled at all times to be advised, at its request, as to the status of work being done by the TACVB and of the details thereof. Coordination shall be maintained by the TACVB with the Executive Director or other designated representatives of the TDC. Either party to the Agreement may request and be granted a conference.

8. CANCELLATION OF WORK IN PROGRESS. The TACVB shall cancel or modify, in accordance with the TDC'S instructions, work in progress. When directed to cease work, the TACVB shall immediately terminate all third party commitments in connection with such work where the TACVB has such right of termination. The TACVB shall enter into non-terminable commitments only after obtaining authorization in writing from the TDC.

9. **TACVB COMPENSATION.** Upon completion, to the satisfaction of the TDC, of the services described herein, the TDC agrees to pay the TACVB in accordance with the financial operating procedures of Leon County and the Florida Statutes, as full and complete consideration for all of the TACVB'S undertakings, tasks, duties, promises, and covenants which are the subject of this Agreement, a total fixed professional fee of \$505,000, subject to budget, which will be determined each year based upon approved marketing plans, desired program and service levels, and respective budgets. Payment from the TDC to the TACVB will be in the amount outlined in Attachment A. Subsequent annual increases during the term of this agreement and for any renewal periods will be dependent upon the comparative annual growth of the trust fund, and negotiated within sixty (60) days prior to the end of each respective fiscal year. Annual compensation will be made in twelve (12) mutually agreed upon monthly installments during the term of the Agreement as a professional fee for all TACVB direct marketing and visitor services rendered to the satisfaction of the TDC in accordance with this Agreement.

10. **SUBCONTRACTING.** The TACVB shall maintain an adequate and competent professional staff and may associate with necessary specialists for the purpose of its services hereunder without additional cost to the TDC, other than approved out-of-pocket, reimbursable costs. Should the TACVB desire to utilize specialists, the TACVB is fully responsible for satisfactory completion of all subcontracted work.

11. BILLING AND PAYMENT.

a) Form. The TACVB shall bill the TDC in conformity with the financial operating procedures of Leon County and the Florida Statutes. Bills for professional fees shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

b) Payment. Professional fees shall be paid by Leon County to the Tallahassee Area Convention and Visitors Bureau and transmitted by U.S. Mail to the TACVB at the address indicated above. The TDC shall not be liable for loss or delay of payment which was not caused by the TDC'S negligence.

c) Availability of Revenues. The TDC, in conjunction with the Leon County Tax Collector, projects revenues for each fiscal year beginning October 1. The TACVB and TDC mutually agree that payment during each fiscal year is subject to actual revenues being approximately equal to projected revenues. In the event this Agreement extends beyond the TDC'S current fiscal year that begins on October 1 of each year and ends on September 30 of each succeeding year, the TACVB and TDC mutually agree that performance and payment during subsequent fiscal periods is contingent upon the continued availability of legislatively approved tax revenues and subject to budgeted funds. The TDC shall be the final determiner of the availability of such revenues.

12. PROPERTY RIGHTS.

a) Exclusive Property of the TDC. All intangible property including slogans, ideas or plans submitted or developed by the TACVB for the TDC during the term hereof, whether or not used; and any and all materials and other tangible property which the TACVB prepared for the TDC or acquired for its account during the term

hereof, all pursuant to the direct marketing and visitor services programs for the TDC shall be the property of the TDC provided that the TDC has paid the invoices for professional fees rendered therefore, if any. Any of this property may be copyrighted, patented or otherwise restricted by the TDC as provided by the Florida Statutes.

Neither the TACVB nor any approved subcontractor shall have any proprietary interest in the products and materials developed under this agreement. There shall be no additional compensation for the rights and property granted under this paragraph. The TDC reserves the right of final approval of the disposition of said property.

b) Contracted Materials and Services. All contracts for the acquisition or use of goods and services shall be entered into and signed by the TACVB to the end that all materials, properties and rights obtained by virtue of such contracts shall become the property of the TDC.

c) Disposition of Property. When the TACVB shall determine that tangible property is of no further use in carrying out this Agreement, the TACVB shall notify the TDC in writing and shall clearly describe the particular items. The TDC shall then notify the TACVB in writing of the disposition the TDC desires with respect to such items. All shipping and transportation costs shall be borne by the TDC, and the TACVB shall not be obligated to store the material at its expense except for a period not to exceed 30 days after notice has been given. These provisions shall apply whether the items in question are in the possession of the TACVB or third parties.

d) TDC Tangible Property. The TACVB shall hold for the TDC and account for or return upon request to the TDC any tangible property of the TDC which may from time to time be entrusted to the TACVB for the purposes provided herein.

13. INDEMNIFICATION.

a) Claims, Liabilities or Damages. The TACVB shall indemnify and hold the TDC and Leon County, including its officers, officials and employees, harmless from and against:

1) Any and all claims, liabilities, or damages arising from contracts between the TACVB and third parties made pursuant to this Agreement, including the cost of litigation and counsel fees.

2) Any and all claims, liabilities, or damages arising from the preparation or presentation of any direct marketing and visitor services programs covered by this Agreement, including the cost of litigation and counsel fees.

b) Recovery of Damages. Only those limitations on the recovery of damages which are specifically provided by Florida Statute or general law or established by rulings of Florida courts shall apply to this Agreement. Such limitations include, but are not limited to, the following:

1) As a political subdivision of the State of Florida, Leon County and its agencies are liable for damages only to the extent provided by any applicable Florida Statutes or Laws.

2) The TDC is not bound by agreements to indemnify or for liquidated damages.

3) No provision of this Agreement shall be construed as a waiver by the TDC of any right, defense or claim which the TDC may have in any litigation arising under this Agreement. Nor shall any Agreement provision be construed as a

waiver by Leon County of any right to initiate litigation.

14. DURATION AND TERMINATION.

a) Term. This Agreement shall become effective as of October 1, 1996 and shall continue in force for a period through September 30, 1997 unless sooner terminated as provided herein.

b) Renewal and Extension. This Agreement will be reviewed within sixty (60) days prior to the end of the term, expiring September 30, 1997 and may be renewed for a period of two years pursuant to then existing laws or procedures governing the TDC. Subsequent reviews and renewals will occur every two years. No provision for automatic renewal of this Agreement shall be effective. Any renewal shall be in writing and executed by both parties.

c) Assignment and Delegation. The TACVB may not assign any rights or delegate any duties hereunder without the express prior written consent of the TDC.

d) Termination. Either party may terminate this Agreement without cause by giving the other party written notice at least ninety (90) days prior to the effective date of termination. Upon receipt of notice of termination, the TACVB shall provide only those services and incur only those expenses specifically approved or directed in writing by the TDC. All other rights and duties of the parties shall continue during such notice period, and the TDC shall be responsible to the TACVB for payment of any contract obligation incurred with third parties during this period only if approved in advance in writing by the TDC.

e) Termination For Breach. This Agreement may also be terminated with

24 hours written notice by the TDC for breach for failure of the TACVB to perform pursuant to any of the provisions or requirements set forth herein. Delivery of notice shall be made, in the event of such termination, to the TACVB at the address indicated above.

f) Assignment Upon Termination. Upon termination of this Agreement the TACVB shall assign to the TDC all of its rights in contracts, agreements, arrangements, or other transactions made with third parties for the TDC account on the effective date of termination or on such other date as may be agreed upon by the parties. In the event any contract is non-assignable or the TACVB cannot obtain a release from its obligations, the TACVB shall continue performance as directed by the TDC, and the TDC shall meet its obligations, as to the unassigned or unreleased contracts only, to the TACVB as though this Agreement had not been terminated.

g) Termination Billings. Upon termination of this Agreement the TACVB shall bill the TDC for all amounts not previously billed and due the TACVB at that time. The TACVB shall not be entitled to payment for work commenced after the date notice of termination was received by the TACVB. The TACVB shall be entitled to payment for work during the termination period only if said work is approved in writing by the TDC after receipt of the notice or, with the express written consent of the TDC, for work approved prior to the effective date of termination.

15. MODIFICATION. This writing contains the entire Agreement of the parties. No representations were made or relied upon by either party, other than those that are expressly set forth. No agent, employee, or other representative of either party is empowered to alter the terms of this Agreement, unless done in writing and signed by

an Executive Officer of the TACVB and the Executive Director for the TDC, or other designee.

16. CONTROLLING LAWS. The validity, interpretation, and performance of this Agreement shall be controlled and construed under the ordinances of Leon County, along with the Laws and Statutes of Florida. Copies of the appropriate ordinances, laws and statutes will be provided to the TACVB by the TDC to ensure compliance.

17. WAIVER. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

18. NOTICES. All notices pertaining to this Agreement shall be in writing and shall be transmitted either by personal hand delivery or through the U.S. Postal Service by certified mail, return receipt requested. The addresses set forth above for the respective parties shall be the places where notices shall be sent, unless written notice of a change of address is given.

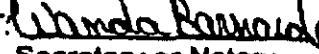
19. AVAILABILITY OF RECORDS. The TDC may cancel this Agreement for refusal by the TACVB to allow public access to all materials, files, records, documents, papers, letters, or other material pertaining to work performed under this Agreement and subject to the provisions of the Florida Statutes.

20. **VALIDITY OF AGREEMENT.** If any section, subsection, sentence, clause, phrase, or portion of this Agreement is for any reason held invalid, unconstitutional or unenforceable, by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed this 1st day of October, 1997.

The Tallahassee Area
Convention and Visitors
Bureau, Inc.

BY: 
Mickey Brady, Chairman

ATTEST:  (SEAL)
Secretary or Notary



WANDA BARNARD
MY COMMISSION # 00363477 EXPIRES
March 7, 1999
BONDED THRU TROY PAUL INSURANCE, INC.

(CORPORATE SEAL)

Leon County Tourist
Development Council

BY: 
Charles E. Wright, Exe. Director

ATTEST: 